IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Bail Appl..No. 5004 of 2007()

CRMP.2724/2007 of I ADDL. DISTRICT COURT, PALAKKAD
CR.NO.9/07 OF EXCISE RANGE OFFICE, CHERPULASSERY, PALAKKAD DISTRICT

.....

PETITIONER : ACCUSED NO.1;

MOHANAN, S/O.CHAMI, AGED 39 YEARS,
KEEZHTHODI VEEDU, PAKARAVUR DESOM,
VELLINEZHI VILLAGE, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY
EXCISE INSPECTOR, CHERPULASSERY EXCISE RANGE,
PALAKKAD, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5004 of 2007

Dated this the 20th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused in the crime. The excise party allegedly on discreet prior information had gone to the scene of the crime on getting information that sale of arrack was going on there. The 2nd accused was apprehended. 3 persons ran away from the scene. The petitioner is one those who allegedly ran away. The petitioner along with the 2nd accused was carrying on business of sale of arrack at the scene of the crime. But the other 2 persons who ran way were allegedly persons who had come to consume the alcohol. Name of the petitioner is shown in the seizure mahazar as also in the occurrence report prepared contemporaneously. Investigation is in progress. The 2nd accused has been released on bail after 7 days. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The allegation that the 1st and 2nd accused were carrying on business of sale of arrack jointly is without any basis. The allegation of the prosecution that the petitioner runs the business with the 2nd accused as an employees is not justified at

all. In these circumstances, anticipatory bail may be granted to the petitioner, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances whatsoever which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The fact that the two others who had run away from the scene of the crime had not been proceeded against cannot at all delivery any advantage to the petitioner. At any rate, this is a fit case where the petitioner must surrender before the learned Magistrate having jurisdiction or the Investigating Officer and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-

(R.BASANT, JUDGE)

rtr/-